



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,759	09/18/2001	John K. Morris	MED-04703/29	8880

7590

11/04/2002

John G. Posa
GIFFORD, KRASS, GROH, SPRINKLE,
ANDERSON & CITKOWSKI, P.C.
280 N. Old Woodward Ave., Suite 400
Birmingham, MI 48009

EXAMINER

DEMILLE, DANTON D

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 11/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

50

Office Action Summary	Application No.		Applicant(s)	
	09/954,759		MORRIS ET AL.	
	Examiner		Art Unit	
	Danton DeMille		3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

2. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

3. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. **Claims 21-50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6290662.**

Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to leave out the details of the pressure sensor and program the electrical circuitry to perform any desired method of therapy desired.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 21-28, 32-34 and 37-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri '458.** Taheri teaches a flexible fabric outer shell, an

inflatable/deflatable bladder supported between the inner wall of the outer shell and the human limb and column 4, lines 49-53, teach "the compressor 66 is a small portable battery operated pump, and the electronics 70, 71 and 72 consist of a microcircuit which has very small volume and weight. The foregoing features thus enhance the portability of the device." Clearly Taheri teaches all of the structure recited but appears silent with regard to whether or not the fabric outer shell is inelastic or not. Clearly the fabric outer shell would have to be inelastic in order to provide the function recited in column 3, lines 35-38, "when the bladders are inflated, they will bulge inwardly toward the adjacent soft tissue to provide good pressure against the deep veins." If the fabric were elastic then the bladders would not bulge inwardly. They would bulge outwardly losing part of the pressure against the deep veins thereby destroying the Taheri reference. It would be inherent that the cloth fabric of the outer shell would be inelastic however, to any extent it is felt that such is not inherent it would have been obvious to one of ordinary skill in the art to modify Taheri to make it inelastic so that the bladders expand inwardly toward the adjacent soft tissue to provide good pressure against the deep veins. Regarding the dependent claims reciting different time intervals of operation, these claims merely recited details and timing of the intended use of the device. Clearly these limitations of intended use are obvious practical considerations dependent of the specific patient and desired therapy. Clearly the programmable operation of the pulse generator is capable of being programmed to perform whatever desired time intervals desired. There is no unobviousness to find the optimum operational characteristics for a particular therapy. The only difference between the claimed invention and Taheri is the exact timing or operation of inflation of the bladders. There are no structural differences between the claims and the Taheri device.

7. **Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri '458 in view of Tumey et al. '801.** Tumey teaches the well know convention of using pressure sensors 47 for stopping the pressure when it reaches a desired level. It would have been obvious to one of ordinary skill in the art to modify Taheri to include pressure sensors as taught by Tumey to control the pressurization of the bladders from going over the desired pressure limit.


8. **Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri '458 in view of Vinmont.** Vinmont teaches the convention of using the inflatable bladder system inside a cast. There is no unobviousness to the intended use of the system. Vinmont exemplifies another conventional alternative outer shell formation. It would have been obvious to one of ordinary skill in the art to modify Taheri to use it in combination with a cast as taught by Vinmont since the art of improving cardiocephal venous flow applies to people in casts who are likewise ambulatory as well as taught by Vinmont.

9. **Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri '458 in view of Corcoran.** Corcoran teaches the convention of stimulating the hand as well as the foot. It would have been obvious to one of ordinary skill in the art to modify Taheri to use the device for the hand as well as the foot as taught by Corcoran for those people who need to stimulation of those limb extremities.

Art Unit: 3764

10. **Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taheri '458 in view of Johnson, Jr. et al. '262.** It would have been obvious to one of ordinary skill in the art to modify Taheri to use a rigid outer shell as taught by Johnson as obvious equivalent alternative form for the cuff.

ddd
31 October, 2002
☎ (703) 308-3713
Fax: (703) 305-3590
danton.demille@uspto.gov


Danton DeMille
Primary Examiner
Art Unit 3764